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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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Calling Party Pays Service Option
in the Commercial Mobile Radio Service

WT Docket No. 97-207

**COMMENTS OF BAY SPRINGS TELEPHONE COMPANY, CROCKETT
TELEPHONE COMPANY, NATIONAL TELEPHONE OF ALABAMA, INC., PEOPLES
TELEPHONE COMPANY, INC., ROANOKE TELEPHONE CO., INC., AND WEST
TENNESSEE TELEPHONE CO., INC.**

Bay Springs Telephone Company, Inc., Crockett Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Inc., Roanoke Telephone Co., Inc., and West Tennessee Telephone Co., Inc., (collectively referred to herein as the "Rural Telephone Companies") by and through their attorneys, hereby offer these comments concerning the Notice of Inquiry ("NOI") released by the Commission on October 23, 1997 regarding the Calling Party Pays ("CPP")¹ service plan.

I. INTRODUCTION.

The Rural Telephone Companies are small rural telephone companies which provide local exchange and exchange access service to a variety of customers, including Commercial Mobile Radio Service ("CMRS") providers. As local exchange carriers ("LECs"), the Rural Telephone Companies are subject to the reciprocal compensation rules set forth in Part 51 of the Commission's rules.²

¹ Under the Calling Party Pays service plan, the party calling a wireless telephone, rather than the receiving party, is charged for any connection charge or air time charge associated with the call.

² 47 C.F.R. § 51.701, *et seq.*

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In its NOI, the Commission requests comment concerning the extent to which it should require LECs to offer the CPP service option to CMRS carriers. As explained in greater detail below, reciprocal compensation requirements mandated by the Telecommunications Act of 1996 (the “1996 Act”) eliminate the need for CPP service. Moreover, CPP is an intrastate service, thus the Commission lacks authority to impose regulations on LECs to implement it. Finally, requiring LECs to assess and collect charges from their subscribers on behalf of CMRS providers would violate the public interest by confusing LEC subscribers. Wireline LEC customers would falsely assume that the LECs are responsible for assessing the new charges and would react negatively to this perceived greediness on the part of the LECs. In addition to producing this loss of customer goodwill, imposition of CPP requirements would create an unreasonable burden on smaller LECs which lack the technical capability to offer CPP. Accordingly, the Rural Telephone Companies vehemently oppose any proposal to mandate LEC provision of the CPP service option.

II. ARGUMENT

Unlike parties receiving calls on wireline telephones, parties receiving calls on wireless telephones are generally charged by the CMRS provider for the calls they receive. In its NOI, the Commission inquires whether implementation of CPP service, which would charge the calling party rather than the called party for calls placed to a wireless telephone, would make CMRS more competitive with traditional wireline local service. It asks commenting parties to consider the extent to which CPP service is made unnecessary by existing reciprocal compensation rules. It also seeks comment concerning whether it has the authority to require LECs to offer the CPP service option to CMRS providers, and whether requiring LECs to offer

this service option to CMRS providers is in the public interest. As demonstrated below, it is clear that reciprocal compensation rules eliminate the need for a CPP plan, that the Commission does not have the authority to require LECs to offer a CPP service option, and that requiring LECs to offer a CPP service option would violate the public interest. Accordingly, the Commission should not require LECs to offer a CPP service option to CMRS providers.

A. Existing Reciprocal Compensation Rules Eliminate the Need for the CPP Service Option

Section 251(b)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §251(b)(5) (the “Act”), requires all local exchange carriers to establish reciprocal compensation arrangements with other telecommunications carriers for the transport and termination of traffic. Reciprocal compensation ensures that telecommunications providers, including CMRS providers, are compensated for the costs they incur in terminating calls originating on the LEC’s network to their wireless service subscribers. Traditionally, CMRS providers have recovered these costs of termination from their subscribers; subscribers are charged on a per-call basis for the cost of receiving calls on their wireless handsets. Under reciprocal compensation rules, however, the burden of paying termination costs is placed on the interconnecting LEC, rather than on the wireless service subscriber. Thus, reciprocal compensation rules place CMRS providers in a position similar to that of the LECs -- per-call costs of termination are recovered from interconnecting carriers, rather than through individual subscribers.

In light of this fact, it is clearly no longer necessary for CMRS providers to impose charges on subscribers -- either wireline or wireless -- in order to recover costs associated with terminating calls to wireless handsets. Those costs are recovered through reciprocal

compensation mechanisms. Moreover, there exists no guarantee that the charges imposed by CMRS providers are reasonable, or that they accurately reflect the cost of terminating calls to wireless service subscribers. CMRS providers are not currently required to justify the rates they charge wireless service subscribers for terminating calls, thus LECs may be placed in the awkward position of risking the displeasure of their customers in order to assess and collect unreasonably exorbitant fees on behalf of their competitors.

Since reciprocal compensation ensures CMRS providers' ability to recover the cost of terminating calls to wireless handsets, implementation of CPP service would result in double recovery by CMRS carriers.³ Originating LECs are statutorily bound to remit payment to cover the termination costs incurred by CMRS providers, thus additional CPP charges purportedly assessed in order to recover the very same termination costs would create excess profits for CMRS providers at the expense of wireline callers to wireless networks. The revenue derived from the CPP scheme would not be used to compensate CMRS providers for their termination-related costs, since the reciprocal compensation payments would have already accomplished this goal, but rather would constitute windfall profits for CMRS providers at the expense of wireline service subscribers. The exploitive effect of the CPP plan is compounded by the likelihood that charges assessed to callers by CMRS providers will exceed the actual cost of terminating the call.

Reciprocal compensation is designed to reimburse CMRS providers for the cost of terminating calls to their wireless service subscribers. Thus, to the extent CMRS providers incur

³ Likewise, to the extent that CMRS carriers currently charge wireless service subscribers for receiving calls and also receives reciprocal compensation from the LEC for terminating those calls, CMRS carriers are already recovering their terminating costs twice.

separate, non-termination related costs for which they seek compensation, these costs should be collected as a flat monthly fee to the wireless service subscriber, similar to the End User Common Line Charge paid by wireline service subscribers. It would be inappropriate to implement CPP in order to recover non-termination related costs, since the calling party has no vested interest in the CMRS provider's network and would receive no benefit from paying for the CMRS provider's non-termination related costs. Accordingly, the Commission should reject proposals to require LECs to offer the CPP service option to CMRS providers.

B. Calling Party Pays Service is an Intrastate Communication Service Over Which the Commission Does Not Have Jurisdiction

Section 2(b)(1) of the Act provides that the Commission does not have jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service."⁴ Regulation of intrastate communication service is the province of the States. The U.S. Court of Appeals for the Eighth Circuit reiterated this point in Iowa Utilities Board v. FCC, in which it observed that "section 2(b) 'fences off' intrastate matters from FCC regulation."⁵ The Eighth Circuit relied on the jurisdictional separation outlined in Section 2(b) in order to justify its conclusion that the Commission does not have the authority to issue rules governing rates to be charged by incumbent LECs for interconnection, unbundled access and resale.⁶

⁴ 47 U.S.C. § 152(b)(1).

⁵ 120 F.3d 753, 796 (8th Cir. 1997), citing Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 370 (1986).

⁶ Id. at 800. It is important to note that the Eighth Circuit concluded that Section 2(b) does not prevent the Commission from imposing pricing rules on CMRS providers. Id. n.21

The Eighth Circuit's decision in Iowa Utilities Board v. FCC is directly applicable to the instant proceeding. Under the CPP service plan, LECs are required to charge their wireline service subscribers for calls terminated by CMRS providers. The vast majority of the calls terminated by CMRS providers are local calls, hence CPP service is properly characterized as an intrastate communication service. The fact that CMRS providers may occasionally terminate interstate calls does not change the nature of the service.⁷ Thus, under Section 2(b)(1) and the holding in Iowa Utilities Board v. FCC, it is abundantly clear that the Commission does not have the authority to require LECs to assess charges for local calls placed to wireless handsets.

C. Imposition of CPP Regulations Would Violate the Public Interest

CPP service shifts the cost of placing a call to a wireless telephone from the call recipient to the party placing the call. Although it is the CMRS provider which receives the revenue generated from the charges billed to calling parties, it is the LEC which must assess the charges and collect them from its wireline service subscriber. CPP would require LECs to bill consumers on behalf of CMRS providers although those consumers have neither ordered CMRS nor agreed to compensate CMRS providers for terminating calls for which LECs have already provided reimbursement pursuant to the reciprocal compensation procedures. It is clear that implementation of the CPP service plan would cause customer confusion regarding the identity of the charging party, would result in loss of customer goodwill by the LECs, and would place a

Thus, the discussion contained herein relates solely to the Commission's authority to regulate LEC provision of CPP, and does not address regulation of CMRS provision of CPP.

⁷ See id at 799 (interconnection between carriers providing local service is an intrastate activity notwithstanding the fact that the local network is sometimes used to originate or complete interstate calls).

significant burden on smaller LECs which do not presently have the technical capability required to implement CPP.

Under the CPP service plan, LECs would bill their wireline service subscribers for calls placed to a CMRS provider's wireless network. However, local wireline service subscribers have become accustomed over a period of many years to paying the LEC a flat monthly fee for placing an unlimited number of local calls. Since these charges were previously assessed to wireless service subscribers rather than wireline subscribers, it is likely that wireline service subscribers will be very displeased with the fact that they are being required to pay a new charge. Wireline service subscribers will be especially outraged if they are also required to pay the LEC a higher flat monthly fee for local calls in order to enable the LEC to recover the cost of reciprocal compensation paid to CMRS providers. Those wireline service subscribers that have never owned a wireless handset due to the exorbitant rates charged by CMRS carriers will be especially shocked at the high local service bills that implementation of CPP would create. The fact that the LEC is billing the wireline service subscribers for the calls placed to wireless telephones will confuse customers, and will lead them to believe that the LECs, rather than the CMRS providers are responsible for creating the new charges which they are being required to pay. As a result, LECs are likely to suffer a significant loss of customer goodwill.

Unhappy wireline service subscribers may erroneously believe that the new CPP charges are being assessed by the LEC in an effort to squeeze extra revenue from consumers. Clearly, this perceived greediness will significantly hamper the LECs' ability to retain customers as competition in the local services market begins to grow. Wireline service customers might also become annoyed by the inconvenience and delay produced by the suggested intercept message.

It is probable that CMRS providers seeking to enter the market for fixed wireless local loops will use the LECs' loss of customer goodwill to their advantage by attempting to characterize the incumbent LECs as greedy and intent on exploiting customers. The irony of this potential claim is clear; it is the CMRS providers, not the LECs, who are seeking double cost recovery and a windfall by exploiting wireline service subscribers. As explained above, reciprocal compensation rules mandate reimbursement of CMRS providers' termination costs by originating LECs. Thus, recovery of termination costs from wireline service subscribers through CPP constitutes double recovery, and a windfall profit for wireless local loop providers.

In addition, CMRS providers may act anti-competitively by charging inflated rates for calls placed from wireline telephones to wireless telephones, and below-cost rates for calls placed from wireless telephones to other wireless telephones, in an effort to increase the attractiveness of wireless local service. Subsidization of the wireless network with revenue from wireline service subscribers violates the general policy against subsidies articulated in Section 254 of the 1996 Act, 47 U.S.C. § 254. Accordingly, CMRS providers should not be permitted to subsidize their wireless networks with revenue derived from the assessment of unnecessary CPP charges on wireline service subscribers.

The loss of goodwill resulting from implementation of the CPP service plan will be compounded in situations where the wireline service subscriber fails to pay CPP-related charges. Due to the high customer charges that are likely to be associated with CPP, most small LECs will be unable to afford the liability related to assuming the financial responsibility for collecting those charges from consumers. Moreover, LECs which attempt to collect CPP-related charges from customers will lose the goodwill of those customers. Accordingly, under no circumstances

should LECs be required to enforce collection of CPP-related charges, incur liability for uncollectibles, or be required to disconnect local wireline service for non-payment of CPP-related charges.

In addition to loss of customer goodwill, implementation of CPP service would place an enormous burden on small and rural LECs which do not currently possess the technical capability to pass the billing information required to implement CPP service. Installing the hardware and software necessary to provide CPP service would be prohibitively expensive for these LECs. It would be grossly unfair to require small and rural LECs to expend their limited resources in order to assist the CMRS providers in collecting windfall profits. The public interest is better served by ensuring affordable, high quality local telephone service from small and rural LECs, than by lining the pockets of CMRS providers.

Finally, some paging companies have taken the position that they are not required to compensate LECs for local service, but that LECs must compensate them for termination of one-way pages. These paging companies would likely view CPP service as a means of forcing the wireline LEC and the wireline service subscriber to bear all the costs associated with one-way pages. Hence, the significant likelihood that implementation of CPP would produce an inequitable outcome, and the lack of justification for activation of CPP, strongly suggest that the Commission should reject proposals to require LECs to offer the CPP service option.

III. CONCLUSION

For all of the foregoing reasons, the Rural Telephone Companies respectfully urge the Commission to reject all proposals that would require LECs to offer and bill for CPP service.

Respectfully submitted,

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December 16, 1997

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